

PRESS RELEASE

WILLINGNESS OF EU MEMBER STATES CRUCIAL FOR ENDING DOUBLE TAXATION OF INVESTMENT INCOME WITHIN THE EU

5 February 2018 - Guillaume Prache, Managing Director of BETTER FINANCE, was invited to address the European Commission's (EC) 'Public Hearing on a simpler Withholding Tax procedure for Europe'. The EC just released a Code of Conduct on withholding tax¹ aimed at improving the refund and/or relief at source of current withholding taxes (WHT) charged by Member States within the European Union. At the hearing all participants, public and private, agreed that the success factor to transform this Code of Conduct into reality is the willingness of Member States to implement this non-binding document.

This is not a given, since those Member States currently avoid refunding or granting tax treaty relief at source for more than €6 billion per year according to the European Commission.²

In support of the Capital Markets Union initiative, this new Code of Conduct aims to reduce the barriers hampering cross-border investments for (individual) investors by reducing the double taxation when the investor is taxed at the source of the dividend as well as at the destination (the investor's country of residence). This double taxation arises for two main reasons:

- the WHT is actually higher than the reduced WHT rate in the bilateral tax treaty (i.e. no actual relief at source), forcing the investor to try to get a refund for this excess tax from the originating Member State.
- the Member State of residence does not allow the investor to deduct the WHT paid according to the tax treaty from the tax on his investment income. This is the case in Belgium where dividends sourced from other Member States are de facto taxed at a rate of 40.5% instead of 30% for Belgian-sourced dividends. The Code does unfortunately not address this serious issue.

The refund procedures are time- and money-consuming for investors, represent a significant barrier to cross-border investments, and do not comply with the rule of free movement of capital within the EU.

For individual investors, depending on the bank and country from which the withholding tax has to be reclaimed, the costs charged by the financial intermediary can vary from €50 to €100. In addition, third party attestations per dividend payment by paying agents cost between €500 and €1,500 via, for example, Clearstream. Such paying agent attestations are required by some countries such as France.

BETTER FINANCE welcomes this Code of Conduct but believes that it is quite unlikely that Member States will prioritise the implementation of this purely non-binding document. Lately

¹ Code of Conduct of Withholding Tax, European Commission

https://ec.europa.eu/taxation_customs/sites/taxation/files/code_of_conduct_on_withholding_tax.pdf

² REPORT FROM THE COMMISSION: Accelerating the capital markets union: addressing national barriers to capital flows, COM(2017) 147 final https://ec.europa.eu/info/sites/info/files/170227-report-capital-barriers_en.pdf

it seems Member States are actually becoming increasingly strict with regards to documentation requirements imposed on investors to reclaim withholding taxes across borders, instead of reducing such requirements.

BETTER FINANCE highlighted that the ‘relief at source procedure’ would be the preferable way forward. As underlined by Guillaume Prache, this procedure is free, simple, and effective between the USA and the EU Member States³. It is very unfortunate that this is not implemented between EU Member States themselves, especially now that they benefit from the automatic cross-border exchange of information with the FATCA CRS forms.

Whereas BETTER FINANCE welcomes the introduction of a single point for the various reclaim forms, it would have preferred a recommendation to establish an EU-wide simple and standardized reclaim form.

This Code of Conduct is a step in the right direction but what we need is more Europe and more willingness from the Member States to implement those recommendations.

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³ The only document required (“form W8 BEN”) is a one page form signed by the investor and given to his financial intermediary